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No. 82-461

In the Supreme Court of the United States

October Term, 1982

PHILLIPS PETROLEUM COMPANY,
Petitioner,

vs.

KEATON G. DUCKWORTH, District Judge, 26th Judicial District, IRL SHUTTS, and ROBERT ANDERSON and BETTY ANDERSON, individually, and as representatives of all producers and royalty owners to whom Phillips Petroleum Company made payment of suspended proceeds of royalties pursuant to Federal Power Commission Opinion Nos. 699, 699H, 749, 749C, 770, and 770A,
Respondents.

REPLY OF PHILLIPS PETROLEUM COMPANY

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TABLE OF CONTENTS

REPLY OF PHILLIPS PETROLEUM COMPANY 1

I. Phillips Can Properly Raise The Fourteenth Amendment Issues 2

A. Phillips Can Properly Question the Jurisdiction Over Non-Resident Plaintiff Class Members 2

B. Asserting Jurisdiction Over Phillips to Decide the Claims of Non-Resident Class Plaintiffs Directly Implicates Phillips' Constitutional Rights 4

CONCLUSION 5

TABLE OF AUTHORITIES

Hanson v. Denckla, 357 U.S. 235 (1958) 3

Chicago v. Atchison, T&S.F.R. Co., 357 U.S. 77 (1958) 3

Rush v. Savchuk, 444 U.S. 320 (1980) 4-5

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REPLY OF PHILLIPS PETROLEUM COMPANY

In their Brief in Opposition, Respondents have undertaken to cloud the issues by making a variety of unsupported charges against Phillips. In their Brief in Opposition, Respondents state that Phillips was "flagrantly violating a State Supreme Court order" by failing to pay interest on suspended royalties. This statement is untrue. Never has Phillips been ordered, as the Respondents claim, to pay interest on the suspended royalties involved in this case. While there is law in Kansas which under certain circumstances would entitle royalty owners to collect interest on suspended royalties, no injunctive relief has ever been issued as a remedy for not paying royalties. At no time has any declaratory relief been entered which would require Phillips to pay these royalties. Under these facts,

the present situation cannot be twisted into the shape of a court having the power to enforce its injunctive orders.

The Respondents also attempt to disparage what they see as a "divide and conquer" approach to this litigation by Phillips. Respondents apparently do not appreciate the nature of the adversary system which allows a defendant to raise defenses to an action. Respondents do not appreciate the important rights inherent in procedural protections Phillips is attempting to invoke. As can be seen by the attempt of Respondents to prejudge the outcome of this action, without any consideration of the defenses asserted by Phillips, the Respondents have adopted the attitude that the end justifies the means.

Respondents have raised one issue which bears upon the question presented by the Petitioner. Respondents question the standing of Petitioner to raise the Fourteenth Amendment claim. This reply brief is addressed to this newly raised issue.

I. Phillips Can Properly Raise The Fourteenth Amendment Issues

A. Phillips Can Properly Question the Jurisdiction Over Non-Resident Plaintiff Class Members.

In their brief in opposition, Respondents raise for the first time the question of whether Petitioner, Phillips Petroleum Company, has standing to litigate the issue of the existence of jurisdiction over a non-resident unnamed plaintiff class member. Respondents argue that Respondents' counsel, as counsel for the class, now properly represents these unnamed class members, and only class counsel can object to the propriety of jurisdiction over these class members.

The Respondents' position assumes that the due process issue has been resolved in their favor. Only if this

Court finds that the Kansas courts can exercise jurisdiction over these unnamed class members can the class counsel appropriately raise an objection on their behalf. Only if the Kansas courts have the power to compel a non-resident to respond to court process or be bound by a resulting judicial determination can the failure of non-residents to respond be seen as an election to be bound by the result. These are the issues which Phillips raises as issues to be resolved by this Court. The Respondents assume these issues have been resolved in their favor.

In any event, it is clear that Phillips has the right to challenge the jurisdiction over these non-resident plaintiffs. In *Hanson v. Denckla*, 357 U.S. 235, 245 (1958) this Court held that where a court could not proceed with a lawsuit without the presence of a non-resident, "any defendant affected by the court's judgment has that 'direct and substantial personal interest in the outcome' that is necessary to challenge whether that jurisdiction was in fact acquired." *Quoting, Chicago v. Atchison, T&S.F.R. Co.*, 357 U.S. 77 (1958). Clearly, the presence of these non-resident plaintiffs is necessary in order to issue a judgment binding upon them.

Phillips has the same interest as the defendant in *Hanson v. Denckla*. If the decision of the Kansas Supreme Court is upheld, Phillips will be forced to litigate approximately 30,000 claims, while knowing that current law in certain states renders it unlikely that a judgment in favor of Phillips would be given full faith and credit. This circumstance provides Phillips the necessary personal stake in the controversy so as to allow it to raise and litigate the constitutional issues.

Phillips can thus question jurisdiction of the Kansas state courts over these unnamed class members.

B. Asserting Jurisdiction Over Phillips to Decide the Claims of Non-Resident Class Plaintiffs Directly Implicates Phillips' Constitutional Rights.

The Respondents state: "No Question is asserted as to the jurisdiction of the trial court or the (Kansas) Supreme Court over Phillips or the trial court's power to enforce a judgment against Phillips." Brief in Opposition, p. 7. This statement is untrue.

Respondents argue that Kansas courts have the power to enforce a judgment against Phillips. Neither the presence of this power nor the willingness of these Kansas courts to exercise this power can be challenged. Phillips, however, disputes the propriety of the exercise of this power in this dispute.

Phillips directly asserts that the due process clause prohibits Kansas from binding Phillips on claims of non-residents which claims arose outside of Kansas. The constitutional protections afforded non-resident defendants are clearly available to this non-resident defendant.

Phillips has its own due process interest in insuring that an interested forum hears and decides the case. Phillips has an interest in insuring the orderly administration of justice by having important unsettled legal issues decided by courts of the states in which these issues are undecided. Phillips has an interest in insuring that the Kansas courts will not overstep their role as courts of co-equal sovereigns, so as to impose requirements on Phillips which are contrary to the laws of other states.

All of these interests can be insured by adhering to the requirement that personal jurisdiction over a defendant is proper only where there is a sufficient nexus "among the defendant, the forum, and the litigation." *Rush v.*

Savchuk, 444 U.S. 320, 327 (1980). With respect to the claim of non-resident class members, there is no nexus among the defendant, the forum and the litigation, other than that which has been created by the court sponsored notice of class action.

It is the sufficiency of this relationship which Phillips is seeking to have reviewed by this Court. Phillips properly has standing to address and litigate these issues.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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